

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DONALD PORTER, Derivatively on
Behalf of GMX RESOURCES INC.,

Plaintiff,

v.

KEN L. KENWORTHY, JR., et al.,

Defendants,

– and –

GMX RESOURCES INC., an Oklahoma
corporation,

Nominal Defendant.

Lead Case No. CIV-11-890-D

RONALD ZERR, Derivatively on Behalf
of GMX RESOURCES,

Plaintiff,

v.

KEN KENWORTHY, JR., et al.,

Defendants,

– and –

GMX RESOURCES,

Nominal Defendant.

Consolidated with:
Case No. CIV-12-313-D

ORDER DISMISSING ACTION WITHOUT PREJUDICE

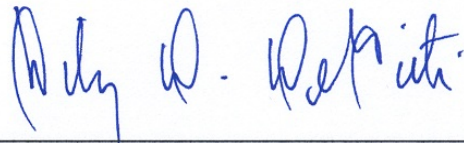
The parties' Joint Stipulation Voluntarily Dismissing Action Without Prejudice [Doc.
No. 44] is **GRANTED**. It is hereby ordered that:

1. The above-captioned actions are dismissed without prejudice.

2. For the reasons stated in the parties' stipulation, and due to the fact the Trustee is pursuing the claims in this consolidated action in the District Court of Oklahoma County, Oklahoma, the Court finds that notice of said dismissal is not required. *Compare Buller v. Owner Operator Indep. Driver Risk Retention Group*, 461 F. Supp. 2d 757, 764 n. 3 (S.D. Ill. 2006) (dismissal of action would not prejudice unnamed class members in light of parallel state action involving same subject matter); *Gassie v. SMH, Ltd.*, No. Civ.A. 97-1786, 1997 WL 564006, at *2 (E.D. La. Sept. 9, 1997) (notice of dismissal not required where court found no evidence of settlement or collusive activity, and purpose of dismissal was to re-file in state court); *Tyco Laboratories, Inc. v. Koppers Co., Inc.*, 82 F.R.D. 466, 469 (E.D. Wis. 1979) (notice not required where, *inter alia*, reason for dismissal was to recommence action in state court).

3. Each party shall bear their own attorney's fees and costs.

IT IS SO ORDERED this 13th day of October, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE